

March 12, 2013

Ms. Bianca Pirayou
Attorney at Law
6950 Almaden Expressway, #125
San Jose, California 95120

Re: Your Request for Advice
Our File No. A-13-028

Dear Ms. Pirayou:

This letter responds to your request for advice on behalf of Senator Ed Hernandez and his candidate-controlled committees regarding campaign provisions of the Political Reform Act (the “Act”).¹

QUESTIONS

1. In order to reflect that he will seek election to new/renumbered Senate District 22 in 2014, may Senator Hernandez amend his current Form 501 and the corresponding Form 410 for the Senate 2014 Committee to reflect new Senate District 22?

2. May Senator Hernandez carry over all or a portion of the campaign funds remaining in the Senate 2010 Committee account to the Senate 2014 Committee pursuant to Section 85317 and without attribution?

CONCLUSIONS

1. Yes. Where new Senate District 22 encompasses approximately 80 percent of old Senate District 24, Senator Hernandez may amend his current Form 501 and corresponding Form 410 for the Senate 2014 Committee to reflect new Senate District 22.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

2. Yes. For purposes of Section 85317 which permits candidates to carry over contributions when seeking another term of the same office, Senator Hernandez is considered to be seeking a subsequent election to the same elective state office. Therefore he may carry over all or a portion of the campaign funds remaining in the Senate 2010 Committee account to the Senate 2014 Committee without attribution.

FACTS

Senator Ed Hernandez has the two candidate-controlled committees, Dr. Ed Hernandez O.D. Democrat for Senate 2014 (“Senate 2014 Committee”) and Dr. Ed Hernandez O.D. Democrat for Senate 2010 (“Senate 2010 Committee”).

The Senate 2010 Committee was established in February 2009 for Senator Hernandez’s election to California Senate District 24 in 2010. Senator Hernandez was elected in November 2010 to the State Senate for District 24. The current cash balance of the Senate 2010 Committee is approximately \$252,000.

The Senate 2014 Committee was established in November 2010 for Senator Hernandez’s re-election to Senate District 24 in 2014. The current cash balance of the Senate 2014 Committee is approximately \$691,000.

After the boundaries of California’s legislative districts were recently redrawn, the geographic boundaries of Senate District 24 changed slightly and the district was renumbered to Senate District 22. New Senate District 22 encompasses approximately 80 percent of old Senate District 24.

You further state that after the boundary changes, Senator Hernandez’s current residence is in Senate District 29. Senator Hernandez will seek election to new Senate District 22 in 2014 and plans to move his residence and establish domicile in new Senate District 22 next month.²

ANALYSIS

Reapportionment resulted in district number changes and also different geographic boundaries for some elective offices. As a result candidates and incumbents may need to amend or file new campaign disclosure forms. In general, we have advised that if a candidate/incumbent continues in the same elective office and reapportionment results only in a district number change, the candidate/incumbent only needs to file an amendment to certain campaign forms. Alternatively, if a candidate/incumbent seeks a different office, a new committee, bank account, and new forms must be established. (See FPPC fact sheet titled “Redistricting: Candidate Filing Requirements,” copy enclosed.)

² The California Constitutional provisions governing district residency are outside the Political Reform Act and we do not advise on them.

In this case, new Senate District 22 encompasses approximately 80 percent of old Senate District 24. Senator Hernandez may amend his current candidate intention statement (Form 501) and corresponding statement of organization (Form 410) for the Senate 2014 Committee to reflect new Senate District 22.

To ensure that state contribution limits are complied with, the Act generally requires attribution to specific contributors when a candidate transfers funds between controlled committees for different offices. Section 85306 governs transfers between a candidate's own committees:

“(a) A candidate may transfer campaign funds from one controlled committee to a controlled committee for elective state office of the same candidate. Contributions transferred shall be attributed to specific contributors using a ‘last in, first out’ or ‘first in, first out’ accounting method, and these attributed contributions when aggregated with all other contributions from the same contributor may not exceed the limits set forth in Section 85301 or 85302.”

However, when a candidate is seeking another term of the same elective state office, Section 85317 permits the carry over of contributions raised for that elective state office without attribution. Section 85317 states:

“Notwithstanding subdivision (a) of Section 85306, a candidate for elective state office may carry over contributions raised in connection with one election for elective state office to pay campaign expenditures incurred in connection with a subsequent election for the same elective state office.”

Regulation 18537.1 provides as follows concerning carry over of contributions:

“(a) For purposes of Government Code section 85317 and this regulation, ‘carry over’ refers to the movement of campaign funds to the candidate’s controlled committee established for a subsequent election to the same elective state office without attribution as required by Government Code section 85306(a).

(b) Campaign funds are available to be ‘carried over’ pursuant to Government Code section 85317 and this regulation only if all of the following apply:

(1) The funds to be ‘carried over’ are held in a campaign bank account/campaign committee established for an election to elective state office occurring on or after January 1, 2001, or for candidates for statewide elective office, for an election occurring on or after November 6, 2002;

(2) The campaign bank account/campaign committee that is holding the funds to be ‘carried over’ was established for an election that has already been held; and

(3) The funds to be ‘carried over’ are not considered ‘surplus campaign funds’ as defined in Government Code section 89519.

(c) For the purposes of Government Code section 85317, ‘subsequent election for the same elective state office’ refers to:

- (1) The election to the next term of office immediately following the election/term of office for which the funds were raised;
- (2) The general election, which is subsequent to and for the same term of office as the primary election for which the funds were raised; or
- (3) The special general election, which is subsequent to and for the same term of office as the special primary election for which the funds were raised. . . .”

For purposes of Section 85317, Senator Hernandez is seeking a subsequent election to the same elective state office and therefore he may carry over all or a portion of the campaign funds remaining in the Senate 2010 Committee account to the Senate 2014 Committee without attribution.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Hyla P. Wagner
Senior Counsel, Legal Division

HPW:jgl

Enclosure